

**AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
E-MERGING TECHNOLOGIES GROUP, INC.**

THIS AGREEMENT is made and entered into this _____ day of _____ 2013, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and E-MERGING TECHNOLOGIES GROUP, INC., an Ohio corporation authorized to do business in the State of California (hereinafter "CONSULTANT").

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

CONSULTANT shall perform those services specified in detail in EXHIBIT A, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

- A. The initial term of this AGREEMENT shall be retroactive from May 1, 2013 and shall extend through June 30, 2014, inclusive ("Initial Term"), subject to the provisions of SECTION 11 of this AGREEMENT.
- B. The CITY, at CITY's sole option, may extend the term of the AGREEMENT for up to four (4) one-year-option periods, at the rate of increase specified in Section 4 of this AGREEMENT.
- C. Before the expiration of the Initial Term or any option period, the City Manager may exercise any of the one-year option periods by written Notice of Exercise of Option.

- D. CITY's agreement to extend the term of this AGREEMENT is not a waiver of the "time is of the essence" provision in SECTION 3.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to be completed according to the schedule set out in EXHIBIT B, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

- A. The compensation paid to CONSULTANT for payment of professional services shall not exceed One Hundred Fifty-Eight Thousand One Hundred Twenty-One Dollars (\$158,121). The rate and schedule of payment is set out in EXHIBIT C, entitled "COMPENSATION," which is attached hereto and incorporated herein.
- B. The total amount of compensation for the Initial Term plus all four option periods shall not exceed Eight Hundred Fifteen Thousand Five Hundred Forty Dollars (\$815,540). The rate and schedule of payment during the Initial Term and all option periods is set out in EXHIBIT C, entitled "COMPENSATION," which is attached hereto and incorporated herein.
- C. CONSULTANT agrees that in the performance of this AGREEMENT, CONSULTANT shall adhere to City Council Policy 1-19, the following provisions of which are made applicable to this AGREEMENT:
1. It is the policy of the CITY that CITY's funds should not be used for the purchase of single-serving bottled water.

2. The following circumstances shall constitute exceptions to City Council Policy 1-19:
 - a. Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services.
 - b. High risk of cross-contamination with non-potable water.
 - c. Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water may need to be distributed for health and safety reasons.
3. CONSULTANT acknowledges and agrees that an invoice seeking reimbursement from CITY for the cost of single-serving bottled water under the exception referenced above in Subsection 2 (c) must be accompanied by a waiver form provided by CITY and signed by the department head of the CITY department administering this AGREEMENT.

SECTION 5. METHOD OF PAYMENT.

Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONSULTANT's obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

CONSULTANT shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONSULTANT's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 9. INSURANCE REQUIREMENTS.

CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT D, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.
- C. CITY's Chief of Police is empowered to terminate this AGREEMENT on behalf of CITY.
- D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this AGREEMENT, and upon receipt thereof, CITY shall pay CONSULTANT for services performed to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and CONSULTANT agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Without limiting the generality of the preceding sentence, CONSULTANT shall comply with the provisions of CITY's Business Tax Ordinance in Chapter 4.76 of the San José Municipal Code.

SECTION 14. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.

CONSULTANT agrees that, in the performance of this Agreement, CONSULTANT shall perform its obligations under the agreement in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the CITY'S website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>.

Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

- A. Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
- B. Use of Energy Star Compliant equipment.
- C. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
- D. Internal waste reduction and reuse protocol(s).

- E. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 15. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 16. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 17. WAIVER.

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 18. CONSULTANT'S BOOKS AND RECORDS.

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to

CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this AGREEMENT.

- B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT. CONSULTANT acknowledges that under certain circumstances specified in California Government Code Section 8546.7, this AGREEMENT (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.
- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents

shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

SECTION 19. CONFLICT OF INTEREST.

CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. As of the date of entering into this AGREEMENT, CONSULTANT's employees assigned to perform services as specified in EXHIBIT B of this AGREEMENT ("CONSULTANT's Assigned Employees") shall not be required to complete and file a Form 700 with CITY's Clerk. In the event that the CITY subsequently determines to require CONSULTANT's Assigned Employees to complete and file a Form 700 with CITY's Clerk, CITY will notify CONSULTANT in writing of such requirement, including without limitation, instructions regarding the categories of economic interests subject to disclosure on the Form 700 ("Form 700 Notice"). CONSULTANT shall cause CONSULTANT's Assigned Employees to complete and file the Form 700 with CITY's Clerk and to submit a copy to Lisa Perez, Fiscal and Personnel Division Manager, in accordance with the instructions specified in the Form 700 Notice, no later than thirty (30) days of the date of the Form 700 Notice.

SECTION 20. GIFTS.

- A. CONSULTANT is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.
- B. CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by CONSULTANT. In addition to any other

remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.

CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 22. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT E, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 23. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

Chief of Police
San Jose Police Department
201 W. Mission Street
San Jose, CA 95110

To CONSULTANT:

Jeremy Samide
Chief Executive Officer
E-Merging Technologies Group, Inc.
22021 Brookpark Road, Suite 130
Cleveland, OH 44126-3100

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 24. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 25. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this AGREEMENT, the terms specified in the body of this AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

CARL B. MITCHELL
Senior Deputy City Attorney

By _____
NORBERTO DUEÑAS
Deputy City Manager

“CONSULTANT”

E-MERGING TECHNOLOGIES GROUP,
INC. an Ohio corporation authorized to do
business in the State of California

By _____
JEREMY SAMIDE
Chief Executive Officer
22021 Brookpark Road, Suite 130
Cleveland, OH 44126-3100
(440) 779-5680

EXHIBIT A
SCOPE OF SERVICES

CONSULTANT shall perform the following services as directed by the CITY's Chief of Police or his designated representative:

1. Administer polygraph examinations to Police Recruit, Police Reserve, Police Laterals, Public Safety Dispatcher, and Police Data Specialist applicants and other pre-employment situations as required by the City. Each polygraph examination shall consist of approximately six (6) to eight (8) relevant questions in addition to the standard comparison/neutral questions and shall cover general information about the candidate to include, but not be limited to: employment history, prior police history, military service, criminal activity, illegal drugs, employment theft, financial, gambling, drinking habits, and incidence of domestic violence as requested by the CITY's Personnel Unit commander. It is expected that each examination will last approximately two (2) hours in length.
2. Conduct follow-up polygraph examinations of applicants examined under Task 1 above in the instance the CITY has unresolved concerns about the examination results.
3. Submit a detailed written report of the polygraph examinations administered under Tasks 1 and 2 above within ten (10) calendar days of each examination to the Police Personnel Unit of the San Jose Police Department. Each report shall include the results of the polygraph examination, and shall document the candidate's responses to each question asked as part of the examination as well as comments from CONSULTANT's polygrapher or polygraph examiner.
4. Administer polygraph examinations for the San Jose Police Department Internal Affairs Unit. CONSULTANT shall conduct these examinations in relation to internal affairs investigations when required by the CITY. These examinations may be general or specific in nature.

5. Forward the results of the polygraph examination taken under Task 4 above in written form to the Internal Affairs Unit. These written reports or the results of the polygraph examination will not be made available to anyone other than the Internal Affairs Unit.
6. Administer polygraph examinations for the Bureau of Investigations. The polygraph may be general or specific in nature, depending on the case in question, or the person being polygraphed. The polygraph examination shall be available for all units in the Bureau of Investigations for suspects, victims, or witnesses, and any others as required by the CITY.
7. Ensure that all polygraph examinations, the written results, or any other information pertaining to the examinations, shall not be made available to anyone other than an authorized representative from the appropriate unit of the San Jose Police Department.
8. Testify in court for administrative or criminal hearings as necessary and required by CITY to support the findings of any of the polygraph examinations given.
9. Videotape each polygraph examination and submit a copy of the video with the written results of the examination to the appropriate Police Department unit.
10. Handle the heavy volume of polygraph examinations during accelerated hiring periods, and must submit detailed polygraph examination reports within ten (10) calendar days.
11. Have, during the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, either a professional answering service, or a full-time employee to handle the heavy work load of examination appointments, cancellations and reschedules.

All work performed by CONSULTANT pursuant to this AGREEMENT shall be to the satisfaction of the CITY's Chief of Police.

EXHIBIT B
SCHEDULE OF PERFORMANCE

Work will commence on May 1, 2013. Work shall be completed on a continuing basis throughout the Initial term of this AGREEMENT and any option periods.

EXHIBIT C
COMPENSATION

CITY agrees to compensate CONSULTANT at the rates set forth below upon receipt of a monthly invoice from CONSULTANT, for professional services performed in accordance with the terms and conditions of this AGREEMENT.

Type of Service	5/1/2013 – 6/30/2014	7/1/2014 – 6/30/2015	7/1/2015 – 6/30/2016	7/1/2016 – 6/30/2017	7/1/2017 – 6/30/2018
Pre-Employment Polygraph Examinations (per examination)	\$351.38	\$351.38	\$360.16	\$369.16	\$380.23
Internal Affairs/ BOI Examinations (per examination)	\$525.54	\$525.54	\$538.68	\$552.15	\$568.71
Inconclusive Exam or Retest (per examination)	\$325.00	\$325.00	\$325.00	\$325.00	\$325.00
Specific Issue Test – First ten (10) tests (per examination)	\$325.00	\$325.00	\$325.00	\$325.00	\$325.00
Specific Issue Test – Thereafter (per examination)	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00
No Shows (per examination)	\$75.00	\$75.00	\$75.00	\$75.00	\$75.00
Testifying in Court/ Admin Criminal Hearings (per hour)	\$131.25/hr.	\$131.25/hr.	\$134.53/hr.	\$137.89/hr.	\$142.03/hr.

The maximum amount of compensation to be paid to CONSULTANT shall not exceed One Hundred Fifty-Eight Thousand One Hundred Twenty-One Dollars (\$158,121) for professional services performed in accordance with the terms and conditions of this AGREEMENT. The total amount of compensation for the Initial Term plus all four option periods shall not exceed Eight Hundred Fifteen Thousand Five Hundred Forty Dollars (\$815,540). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

CONSULTANT shall submit invoices for services rendered no later than twenty (20) days following the end of the month in which such services were rendered.

There are no reimbursable expenses.

EXHIBIT D
INSURANCE

CONSULTANT, at CONSULTANT's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

CONSULTANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the CONSULTANT's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address or any subsequent e-mail or postal address as may be directed in writing by the Risk Manager:

City of San Jose—Finance Department
Risk & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

CONSULTANT shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT E

SPECIAL PROVISIONS

RETROACTIVE SERVICES

It is understood and agreed that CONSULTANT has provided services prior to the execution of this AGREEMENT in anticipation of its execution. If CITY accepts and approves the services provided by CONSULTANT prior to the date of this AGREEMENT, CITY agrees to compensate CONSULTANT for those services in accordance with the terms of this AGREEMENT. However, in no event shall CONSULTANT be compensated for work performed for CITY prior to May 1, 2013.